

## **Invitation for Bids**

### **Highland Heights Bluff Subdivision**

The City of San Antonio is accepting sealed bids for the purchase of 17 vacant residential parcels of City-owned real property located in Highland Heights Bluff Subdivision in southeast San Antonio.

#### **Deadline for receipt of bids:**

Sealed bids must be received by the Office of the City Clerk, City Hall, 2<sup>nd</sup> Floor, 100 Military Plaza, San Antonio, Texas, before 4:00 p.m., Friday, January 29, 2016.

Visitors to City Hall will be required to enter through the east side of the building during regular business hours. For those that might require the use of a ramp, entry is available on the south side of the building (Dolorosa side). Please plan accordingly and allow for ample time to pass through security screening, sign in and receive a visitor's badge in order to drop off your bid submittal(s).

#### **Submittal Requirements:**

Bid is for purchase of all 17 properties at the same time. Bids for less than all 17 properties will be rejected.

#### **Minimum Bid: \$170,000.00**

- A. One signed original REAL ESTATE BID FORM, which must be complete and free from ambiguity.
- B. The following information:
  - 1. Conceptual project plan (the "Project") for proposed use and/or development of the property to include the following:
    - a. Exterior elevations for the proposed homes including approximate square footage and estimated sales price.
    - b. Project/development schedule including major milestones.  
A list of similarly completed projects - To substantiate experience and ability to perform respondent should list and describe at least three (3) similar projects including references (name, title, entity, telephone number and contractual relationship) that can be contacted with respect to current and past project experience.
  - 2. Financial proforma – Provide a discounted cash flow analysis for the duration of the Project, including but not limited to: estimates of costs, operating expenses, capital reserves including replacement and re-tenanting reserves, net operating income, debt service, partnership percentages, disposition benchmarks, and calculations of net present value, internal rate of return. Explain the financing plan for the Project including the source(s) and amount of debt and equity to be used to capitalize the project, the relationships (e.g., outside lender, parent company, etc.) as well as a proof of funds letter from a financial institution or loan approval verification from a lender.

3. Provide a market study that supports the assumptions and viability of the project, along with a feasibility forecast indicating the supply and demand relationship, including but not limited to demographic data, marketing strategy for sale of homes, and an estimate of the average home price.

### **Evaluation:**

The City will conduct a comprehensive, fair and impartial evaluation of all submittals received in response to this bid. Each submittal will be analyzed to determine overall responsiveness and best value to the City. The City will determine best value based on the following criteria:

1. (75%) Purchase price (all cash is preferred)
2. (10%) Bidder's ability to finance the development of the subdivision. The respondent must provide demonstrable experience in the development of projects of similar complexity, scope and scale to the proposed project.
3. (10%) Overall development plan for the subdivision:
  - a. Meeting all HOA guidelines and deed restrictions
  - b. Construction of single family homes is desired
  - c. Level of infill – will any lots remain vacant?
  - d. Market study that supports the revenue assumptions and viability of the project
  - e. Completion of the sidewalk network for all parcels and related infrastructure
  - f. Schedule for completion of development within allotted time frame. The City desires for development to be completed within 24 months of closing.
4. (5%) Other factors that may be considered by the City in the evaluation and selection of a bid may include, but are not limited to:
  - a. The extent the offered consideration generates value and returns to the City and benefits the public, including in-kind consideration greater than the fair market value of the asset.
  - b. Community benefits, including the economic impact the project will have on the City and affected jurisdictions in terms of tax revenue, as well as plans to employ local contractors and residents.

Beginning December 21st, 2015, the BID FORM and supporting documentation will be available via the City of San Antonio Website at <http://www.sanantonio.gov/rfp/>. Environmental reports, etc. are available upon request. For assistance, contact Jesse Quesada, Senior Management Analyst, (210) 207-6971.

### **Award of Contract and Reservation of Rights**

1. City reserves the right to award contract or no contract in response to this Invitation for Bids.
  - a. The Contract, if awarded, will be awarded to the Respondent whose submittal is deemed the highest value and public benefit to City upon approval by City Council.
  - b. City also reserves the right to terminate this bid, and reissue a subsequent solicitation, and/or remedy technical errors in the bid process.
  - c. This bid does not commit City to enter into a Contract, nor does it obligate City to pay any costs incurred in preparation or submission of a response or in anticipation of a contract. Any cost or expense incurred by the Respondent that is associated with the

preparation of the submittal, or during any phase of the selection process, shall be borne solely by Respondent.

- d. City reserves the right to verify any and all information submitted by Respondents at anytime of the solicitation/evaluation process.
- e. **THE PROPERTY WILL BE SOLD “AS IS.”** The contract will provide for not more than thirty days for due diligence, which must be performed at Buyer’s expense and will require Buyer to pay for the appraisal, survey, title policy (if desired by Buyer), and all closing costs.
- f. Once the bidder is notified that its bid has been accepted, the bidder has 10 business days, unless specifically extended at the sole discretion of the City, to submit:
  - Consideration in the amount of \$15,000 earnest money made payable to the City of San Antonio
  - A signed purchase agreement in the form provided by the City of San Antonio

Failure to timely submit the checks and the signed contract may result in rejection of the bid, at which time the City may select the next bid or reject all bids. Selection of a successful bidder is subject to approval by the San Antonio City Council.

- A. **OWNERSHIP OF DOCUMENTS:** All submittals become the property of City upon receipt and will not be returned. Any information deemed to be confidential by Respondent should be clearly noted on the page(s) where confidential information is contained; however, City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Respondent may not be considered confidential under Texas law, or pursuant to a Court Order.
- B. All respondents must meet the Charter of the City of San Antonio and Ethics Code provisions regarding contracting with the City of San Antonio.

**CITY OF SAN ANTONIO REAL ESTATE BID FORM**  
**Highland Heights Bluff Subdivision**

The City of San Antonio is accepting sealed bids for the purchase of the following 17 vacant parcels of City-owned real property located in the Highland Heights Bluff Subdivision in southeast San Antonio.

**PROPERTY DESCRIPTION:**

The 17 lots are part of a larger subdivision development of single family homes consisting of 180 residential lots on approximately 39.2 acres which currently has been platted and has existing utility infrastructure. The Highland Heights Subdivision resides within City Council District 3 and is located adjacent to Salado Creek, bound by Southeast Military Drive and S. W.W. White Road.

Located in the Highland Heights Bluff Subdivision, an addition to the City of San Antonio, Bexar County, Texas, according to the map or plat thereof recorded in Volume 9570, Page 205-207 of the Deed and Plat Records of Bexar County, Texas, in City Council District 3.

**Minimum bid: \$170,000**

Sealed bids must be received by the Office of the City Clerk, City Hall, 2<sup>nd</sup> Floor, 100 Military Plaza, San Antonio, Texas, before 4:00 p.m., Friday, January 29, 2016.

Visitors to City Hall will be required to enter through the east side of the building during regular business hours. For those that might require the use of a ramp, entry is available on the south side of the building (Dolorosa side). Please plan accordingly and allow for ample time to pass through security screening, sign in and receive a visitor's badge in order to drop off your bid submittal(s).

THE PROPERTY WILL BE SOLD "AS IS." The contract will provide for not more than thirty days for due diligence, which must be performed at Buyer's expense and will require Buyer to pay for the appraisal, survey, title policy (if desired by Buyer), and all closing costs.

Once the bidder is notified that its bid has been accepted, the bidder has 10 business days, unless specifically extended at the sole discretion of the City, to submit:

- Consideration in the amount of \$15,000 earnest money made payable to the City of San Antonio
- A signed purchase agreement in the form provided by City

Failure to timely submit the checks and the signed contract will be viewed as a rejection of the City's acceptance of the bid, at which time the City may select another bid or reject all bids. Selection of a successful bidder is subject to approval by the San Antonio City Council.

Total Bid Amount \$ \_\_\_\_\_

Cash or other consideration \_\_\_\_\_

(Please provide monetary value of other consideration to equal bid amount.)

The undersigned represents he/she is authorized to legally bind the bidder in this capacity and that the proposed development will be completed within 24 months of closing and will comply with all laws, rules, regulations and guidelines including deed restrictions and HOA policies.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Signer's Name (printed or typed) \_\_\_\_\_

Firm Name (if applicable) \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

**THERE IS A MINIMUM BID OF \$170,000.00 FOR THE PROPERTY. BIDS RECEIVED THAT ARE LESS THAN \$170,000.00 WILL BE AUTOMATICALLY REJECTED.**

# **SAMPLE – May not reflect actual contract or terms**

## **Real Estate Sales Contract**

---

### **Table of Contents**

1. Deadlines and Other Dates.....	8
2. Closing Documents.....	9
3. Exhibits.....	10
4. Purchase and Sale of Property.....	10
5. Earnest Money.....	10
6. Title and Survey.....	11
7. Inspection Period.....	12
8. Representations.....	13
9. Condition until Closing; No Recording of Contract.....	13
10. Termination.....	14
11. Closing.....	14
12. Default and Remedies.....	16
13. Prohibited Interests in Contracts.....	17
14. Dispute Resolution.....	18
15. Miscellaneous Provisions.....	19
16. Public Information.....	21
17. Brokers' Commission.....	22
Title Company Acknowledgment and Receipt.....	23
Title Company Receipt for Earnest Money.....	24
Exhibit A.....	25
Exhibit B.....	26
Exhibit C.....	29
Exhibit D: Form of Deed.....	30

---

#### **Authorizing Ordinance:**

**Authority for Negotiated**  
**Sale:** Local Government Code § 272.001 (b)(6)

#### **Seller:**

#### **Address:**

#### **Phone:**

#### **Email:**

#### **Type of Entity:**

**Seller's Counsel:**

**Address:**

**Phone:**

**Email:**

**Seller's Broker:**

**Address:**

**Phone:**

**Email:**

**Buyer:**

**Address:**

**Phone:**

**Email:**

**Type of Entity:**

**Buyer's Counsel:**

**Address:**

**Phone:**

**Email:**

**Buyer's Broker:**

**Address:**

**Phone:**

**Email:**

**Property:** The land commonly known as [**describe property**] and more fully described in Exhibit A ("Land")

**Title Company:**

**Address:**

**Phone:**

**Email:**

**Underwriter:**

**Purchase Price:**

**Earnest Money:**

**Surveyor:**

**Survey**

**Category:**

**Independent Consideration:**

**Buyer's Liquidated Damages:**

**Seller's Additional Liquidated  
Damages:**

**Effective Date:** The later of (A the effective date of the Authorizing Ordinance and (B) the date a representative of the Title Company signs a receipt for this fully executed contract

**County for Performance** Bexar County, Texas

## **1. Deadlines and Other Dates.**

All deadlines in this contract expire at 5:00 P.M. local time where the Property is located. If a deadline falls on a Saturday, Sunday, or federal or local holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or holiday. Time is of the essence.

- |   |                               |
|---|-------------------------------|
| 1.01. Earnest Money Deadline  | Days after the Effective Date |
| 1.02. Delivery of Title Commitment  | Days after the Effective Date |
| 1.03. Delivery of Survey  | Days after Effective Date     |
| 1.04. Delivery of legible copies of instruments referenced in the Title Commitment and Survey | Days after the Effective Date |
| 1.05. Delivery of Seller's records as specified in Exhibit C                                  | Days after the Effective Date |



1.06.	Asbestos Survey Deadline	Days after Effective Date
1.07.	Buyer's Objection Deadline	Days after the receipt of Title Commitment and legible copies of instruments referenced in the Title Commitment, Survey
1.08.	Seller's Cure Notice Deadline	Days after Buyer's Objection Deadline
1.09.	Buyer's Termination Deadline	Days after Notice of Cure Deadline
1.10.	End of Inspection Period	Days after the Effective Date
1.11.	Closing Date	30 days after the Inspection Period
1.12.	Closing Time	10:00 A.M.

1.?? The Independent Consideration is in addition to the Earnest Money and is due within three business days of the effective date of the Authorizing Ordinance.

1.?? The deadlines may be altered by the mutual agreement of the parties. The Director of the Transportation and Capital Improvements Department may consent to such changes on behalf of Seller without further authorization of City Council.

## **2. Closing Documents.**

2.01. At closing, Seller will deliver the following items:

Deed Without Warranty

IRS Nonforeign Person Affidavit

Evidence of Seller's authority to close this transaction

Notices, statements, and certificates as specified in Exhibit C

2.02. At closing, Buyer will deliver the following items:

Evidence of Buyer's authority to consummate this transaction

Deceptive Trade Practices Act waiver

Purchase Price

2.03. The documents listed above are collectively known as the “Closing Documents.”

### **3. Exhibits.**

The following are attached to and are part of this contract for all purposes as if fully set forth:

Exhibit A—Description of the Land

Exhibit B—Representations

Exhibit C—Form of Deed

Exhibit D—Notice of Re-Entry

### **4. Purchase and Sale of Property.**

4.01. Seller will sell and convey the Property to Buyer, and Buyer will buy and pay Seller for the Property. The promises by Buyer and Seller stated in this contract are the consideration for the formation of this contract. The contract may be assigned by either party so as long as the other party to the contract approves, and such assignment and approval are in writing. A party may not withhold approval unreasonably.

4.02. The Property includes all improvements situated on it, together with all right, title, and interest of Seller, if any, in and to all appurtenances, strips or gores, roads, easements, streets, and rights-of-way bounding the Land; all utility capacity, water rights, licenses, permits, entitlements, and bonds, if any, and all other rights and benefits attributable to the Land; and all rights of ingress and egress thereto (collectively, the “**Additional Interests**”); except that the Additional Interests do not include, and Seller specifically reserves, such of the following interests as Seller holds by virtue of being a municipality as opposed to the owner of the fee-simple interest in the Property: utility easements, drainage easements, streets, alleys, and other rights-of-way dedicated for public use.

4.03. The deed from Seller to Buyer will have the following reservation(s):

4.04. The Notice of Re-Entry must be substantially in the form attached as **Exhibit D**.

### **5. Earnest Money.**

5.01. Buyer must deposit the Earnest Money with the Title Company no later than the Earnest Money Deadline.

5.02. Buyer may direct Title Company to invest the Earnest Money in an interest-bearing account in a federally insured financial institution by giving notice to Title Company and satisfying Title Company's requirements for investing the Earnest Money in an interest-bearing account. Any interest earned on the Earnest Money will be paid to the party that becomes entitled to the Earnest Money. Accrued interest is a credit against the purchase price at closing.

5.03. Buyer must deliver the Earnest Money in immediately available funds to Title Company and obtain Title Company's signature before the Earnest Money Deadline for this contract to be effective. Immediately available funds are those available for use immediately upon receipt and do not include funds represented by a check or similar instrument that must clear the institution on which it is drawn.

## **6. Title and Survey.**

6.01. *Review of Title.* The following statutory notice is provided to Buyer on behalf of the real estate licensees, if any, involved in this transaction: **Buyer is advised that it should either have the abstract covering the Property examined by an attorney of Buyer's own selection or be furnished with or obtain a policy of title insurance.**

6.02. *Title Commitment; Title Policy.* "Title Commitment" means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, as agent for Underwriter, stating the condition of title to the Land. The "effective date" stated in the Title Commitment must be after the Effective Date of this contract. "Title Policy" means an Owner Policy of Title Insurance issued by Title Company, as agent for Underwriter, in conformity with the last Title Commitment delivered to and approved by Buyer.

6.03. *Survey.*

6.03.01 "Survey" means an on-the-ground, staked plat of survey and metes-and-bounds description of the Land, prepared by Surveyor or another surveyor satisfactory to Title Company, dated after the Effective Date, and certified to comply with the current standards and specifications as published by the Texas Society of Professional Surveyors for the Survey Category.

6.03.02 If Seller does not object to the survey within 20 days after Buyer delivers it to Seller, the land subject to the survey automatically becomes the Land subject to this contract, and the field notes and plat of the survey automatically become Exhibit A to this agreement, whether or not physically attached.

6.04. *Delivery of Title Commitment, Survey.* Seller must deliver the Title Commitment and the Survey to Buyer by the deadlines stated in section 1.

6.05. *Buyer's Objections.* Buyer has until the Buyer's Objection Deadline to review the Survey, Title Commitment, and legible copies of the title instruments referenced in them and notify Seller of Buyer's objections to any of them ("Buyer's Objections"). Buyer will be deemed to have approved all matters reflected by the Survey and Title Commitment to which Buyer has made no Buyer's Objection by the Buyer's Objection Deadline. The matters that Buyer either approves or is deemed to have approved are "Permitted Exceptions."

6.06. If Buyer notifies Seller of any Buyer's Objections, Seller has until Seller's Cure Notice Deadline to notify Buyer whether Seller agrees to cure the Buyer's Objections before closing ("Cure Notice"). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Buyer's Objections before closing, Buyer may, on or before Buyer's Termination Deadline, notify Seller that this contract is terminated. In absence of such timely notice, Buyer will proceed to close, subject to Seller's obligations to resolve the items listed in Schedule C of the Title Commitment, remove the liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date, and cure only the Buyer's Objections that Seller has agreed to cure in the Cure Notice.

6.07. At or before closing, Seller must resolve the items that are listed on Schedule C of the Title Commitment, remove all liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date of this contract, and cure the Buyer's Objections that Seller has agreed to cure.

## **7. Inspection Period.**

7.01. *Entry onto the Property.* Buyer may enter the Property before closing to inspect it, subject to the following:

- a. Buyer must deliver evidence to Seller that Buyer has insurance for its proposed inspection activities, in amounts and with coverages that are substantially the same as those maintained by Seller or in such lesser amounts or with such lesser coverages as are reasonably satisfactory to Seller;
- b. Buyer may not unreasonably interfere with existing operations or occupants of the Property;
- c. Buyer must notify Seller in advance of Buyer's plans to conduct tests so that Seller may be present during the tests;
- d. If the Property is altered because of Buyer's inspections, Buyer must return the Property to its preinspection condition promptly after the alteration occurs;

- e. Buyer must deliver to Seller copies of all inspection reports that Buyer prepares or receives from third-party consultants or contractors within three days of their preparation or receipt; and
- f. Buyer must abide by any other reasonable entry rules imposed by Seller.

7.02. *Buyer's Right to Terminate.* Buyer may terminate this contract for any reason by notifying Seller before the end of the Inspection Period. The Independent Consideration is compensation to Seller for Buyer's right of cancellation and is not refundable under any circumstance.

7.03. *Buyer's Indemnity and Release of Seller*

- a. *Indemnity.* Buyer will indemnify, defend, and hold Seller harmless from any loss, attorney's fees, expenses, or claims arising out of Buyer's investigation of the Property, except for repair or remediation of existing conditions discovered by Buyer's inspection.
- b. *Release.* Buyer releases Seller and those persons acting on Seller's behalf from all claims and causes of action (including claims for attorney's fees and court and other costs) resulting from Buyer's investigation of the Property.

## **8. Representations.**

The parties' representations stated in Exhibit B are true and correct as of the Effective Date and must be true and correct on the Closing Date.

## **9. Condition until Closing; No Recording of Contract.**

9.01. *Maintenance and Operation.* Until closing, Seller will (a) maintain the Property as it existed on the Effective Date, except for reasonable wear and tear and casualty damage; (b) operate the Property in the same manner as it was operated on the Effective Date; and (c) comply with all contracts and governmental regulations affecting the Property.

9.02. *Casualty Damage.* Seller will notify Buyer promptly after discovery of any casualty damage to the Property. Seller will have no obligation to repair or replace the Property if it is damaged by casualty before closing. Buyer may terminate this contract if the casualty damage that occurs before closing would materially affect Buyer's intended use of the Property, by giving notice to Seller within 15 days after receipt of Seller's notice of the casualty (or before closing if Seller's notice of the casualty is received less than fifteen days before closing). If Buyer does not terminate this contract, Seller will convey the Property to Buyer in its damaged condition.

9.03. *Condemnation.* Seller will notify Buyer promptly after Seller receives notice that any part of the Property has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority. Buyer may terminate this contract if the condemnation would materially affect Buyer's intended use of the Property by giving notice to Seller within 15 days after receipt of Seller's notice to Buyer (or before closing if Seller's notice is received less than fifteen days before closing). If Buyer does not terminate this contract, (a) Buyer and Seller will each have the right to appear and defend their respective interests in the Property in the condemnation proceedings, (b) any award in condemnation will be assigned to Buyer, and (c) if the taking occurs before closing, the description of the Property will be revised to delete the portion taken.

9.04. *No Recording.* Buyer may not file this contract or any memorandum or notice of this contract in the real property records of any county. If, however, Buyer records this contract or a memorandum or notice, Seller may terminate this contract and record a notice of termination.

## **10. Termination.**

### *10.01. Disposition of Earnest Money after Termination*

- a. *To Buyer.* If Buyer terminates this contract in accordance with any of Buyer's rights to terminate, Seller will, within five days of receipt of Buyer's termination notice, authorize Title Company to deliver the Earnest Money to Buyer.
- b. *To Seller.* If Seller terminates this contract in accordance with any of Seller's rights to terminate, Buyer will, within five days of receipt of Seller's termination notice, authorize Title Company to pay and deliver the Earnest Money to Seller.

10.02. *Duties after Termination.* If this contract is terminated, Buyer will promptly return to Seller all documents relating to the Property that Seller has delivered to Buyer and all copies that Buyer has made of the documents. After return of the documents and copies, neither party will have further duties or obligations to the other under this contract, except for those obligations that cannot be or were not performed before termination of this contract.

## **11. Closing.**

11.01. *Closing.* This transaction will close at Title Company's offices at the Closing Date and Closing Time. At closing, the following will occur:

- a. *Closing Documents.* The parties will execute and deliver the Closing Documents.

- b. *Payment of Purchase Price.* Buyer will deliver the Purchase Price and other amounts that Buyer is obligated to pay under this contract to Title Company in funds acceptable to Title Company. The Earnest Money will be applied to the Purchase Price.
- c. *Disbursement of Funds; Recording; Copies.* Title Company will be instructed to disburse the Purchase Price and other funds in accordance with this contract, record the deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.
- d. *Possession.* Seller will deliver possession of the Property to Buyer, subject to the Permitted Exceptions existing at closing.
- e. Buyer need not close if Seller cannot or does not deliver indefeasible title at closing. If Buyer does not close for want of indefeasible title, the earnest money is returned to Buyer.

11.02. *Transaction Costs*

- a. Buyer will pay:
  - i. the basic charge for the Title Policy;
  - ii. one-half of the escrow fee charged by Title Company;
  - iii. the costs to prepare the deed;
  - iv. the costs to record all documents to cure Title Objections agreed to be cured by Seller;
  - v. Title Company's inspection fee to delete from the Title Policy the customary exception for parties in possession;
  - vi. the additional premium for the "survey/area and boundary deletion" in the Title Policy
  - vii. the costs to obtain the Survey and certificates or reports of ad valorem taxes;
  - viii. the costs to deliver copies of the instruments described in article 1; and
  - ix. Buyer's expenses and attorney's fees.

- b. Seller will pay:
  - i. one-half of the escrow fee charged by Title Company;
  - ii. the costs to obtain, deliver, and record all documents other than those to be recorded at Seller's expense;
  - iii. Seller's expenses and attorney's fees.
- c. *Ad Valorem Taxes.* Property owned by Seller is exempt under Texas Property Tax Code § 11.11. At closing property taxes will be prorated according to Texas Tax Code § 26.10. Seller assumes no responsibility for ad valorem taxes for any period, rollback or otherwise, not otherwise imposed on it by law.
- d. *Income and Expenses.* Income and expenses pertaining to operation of the Property will be prorated as of the Closing Date on an accrual basis and paid at closing as a credit or debit adjustment to the Purchase Price. Invoices that are received after closing for operating expenses incurred on or before the Closing Date and not adjusted at closing will be prorated between the parties as of the Closing Date, and Seller will pay its share within ten days of notice of Buyer's invoice.
- e. *Postclosing Adjustments.* If errors in the prorations made at closing are identified within ninety days after closing, Seller and Buyer will make postclosing adjustments to correct the errors within fifteen days of receipt of notice of the errors.

## **12. Default and Remedies.**

12.01. *Seller's Default.* If Seller fails to perform any of its obligations under this contract or if any of Seller's representations is not true and correct as of the Effective Date or on the Closing Date ("Seller's Default"), Buyer may elect either of the following as its sole and exclusive remedy:

- a. *Termination.* Buyer may terminate this contract by giving notice to Seller on or before the expiration of the Inspection Period and have the Earnest Money returned to Buyer.
- b. *Liquidated Damages.* If Seller's Default occurs after Buyer has incurred costs to investigate the Property after the Effective Date and Buyer terminates this contract in accordance with the previous sentence, subject to appropriation of adequate funds by Council, Seller will also pay to Buyer as liquidated damages



the lesser of Buyer's actual out-of-pocket expenses incurred to investigate the Property after the Effective Date or the amount of Buyer's Liquidated Damages, within ten days of Seller's receipt of an invoice from Buyer stating the amount of Buyer's expenses.

12.02. *Buyer's Default.* If Buyer fails to perform any of its obligations under this contract ("Buyer's Default"), Seller may elect either of the following as its sole and exclusive remedy:

- a. *Termination; Liquidated Damages.* Seller may terminate this contract by giving notice to Buyer on or before the Closing Date and Closing Time and have the Earnest Money paid to Seller. If Buyer's Default occurs after Seller has incurred costs to perform its obligations under this contract and Seller terminates this contract in accordance with the previous sentence, Buyer will also reimburse Seller for the lesser of Seller's actual out-of-pocket expenses incurred to perform its obligations under this contract or the amount of Seller's Additional Liquidated Damages, within 10 days of Buyer's receipt of an invoice from Seller stating the amount of Seller's expenses.
- b. *Specific Performance.* Seller may enforce specific performance of Buyer's obligations under this contract. If title to the Property is awarded to Buyer, the conveyance will be subject to the matters stated in the Title Commitment.

12.03. *Liquidated Damages.* The parties agree that just compensation for the harm that would be caused by a default by either party cannot be accurately estimated or would be very difficult to accurately estimate and that the Earnest Money and the amounts provided above are reasonable forecasts of just compensation to the nondefaulting party for the harm that would be caused by a default.

### **13. Prohibited Interests in Contracts.**

13.01 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;

(iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;

(iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

13.02 Buyer warrants and certifies as follows:

(i) Buyer and its officers, employees and agents are neither officers nor employees of the City.

(ii) Buyer has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

13.03 Contractor acknowledges that City's reliance on the above warranties and certifications is reasonable.

## **14. Dispute Resolution.**

14.01 As a condition precedent to bringing any action arising out of or relating to this agreement or any aspect thereof, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

14.02. Filing suit on a claim that should be mediated hereunder waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

14.03 Mediation must be conducted in San Antonio, Bexar County, Texas.

14.04 The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.

14.05 If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

14.06 Mediator fees must be borne equally.

14.07. The parties need not mediate before going to court for either party to seek emergency injunctive relief.

## **15. Miscellaneous Provisions.**

15.01 *Applicable Law.* This Agreement is entered into in San Antonio, Bexar County, state of Texas. **THE CONSTRUCTION OF THIS AGREEMENT AND THE RIGHTS, REMEDIES, AND OBLIGATIONS ARISING THEREUNDER ARE GOVERNED BY THE LAWS OF THE STATE OF TEXAS.** But the Texas conflicts of law rules must not be used to apply the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

15.02 *Severability.* If any portion hereof is determined to be invalid or unenforceable, such determination does not affect the remainder hereof.

15.03 *Successors.* This Agreement inures to the benefit of and is binding on the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

15.04 *Integration.* **This Written Agreement Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

15.05 *Modification.*

15.05.01. This Agreement may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to the foregoing, any of the terms of this Agreement may be modified at any time by the party entitled to the benefit thereof, but no such modification, express or implied, affects the right of the modifying party to require observance of either (i) the same term or condition as it applies on a subsequent or previous occasion or (ii) any other term hereof.

15.05.02 The Director and Assistant Director of the Transportation and Capital Improvements department may, without further action of City Council, agree on behalf of Seller to extensions of deadlines or other non-material modifications to the rights and obligations of the parties under this Agreement.

15.06 *Third Party Beneficiaries.* This Agreement is intended for the benefit of the parties hereto and their successors and permitted assigns only. There are no third party beneficiaries hereof.

15.07 *Notices.* Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the preamble hereof. If the addressee is a corporation, notices must be addressed to the attention of its President. The giving of notice is complete three days after its deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is given only upon actual receipt. Address for notice may be changed by giving notice hereunder.

15.08 *Pronouns.* In construing this Agreement, plural constructions include the singular, and singular constructions include the plural. No significance attaches to whether a pronoun is masculine, feminine, or neuter. The words "herein," "hereof," and other, similar compounds of the word "here" refer to this entire Agreement, not to any particular provision of it.

15.09 *Captions.* Paragraph captions in this Agreement are for ease of reference only and do not affect the interpretation hereof.

15.10 *Counterparts.* This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

15.11 *Further Assurances.* The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, shall alter the rights or obligations of the parties as contained in this agreement

15.12. *Assignment.* With Seller's consent, which is not to be unreasonably withheld, Buyer may assign this contract and Buyer's rights under it only to an entity in which Buyer can, directly or indirectly, direct or cause the direction of its management and policies, whether through the ownership of voting securities or otherwise. Any other assignment is void.

15.13. *Survival.* The obligations of this contract that cannot be performed before termination of this contract or before closing survive termination of this contract or closing, and the legal doctrine of merger does not apply to these matters. If there is any conflict between the Closing Documents and this contract, the Closing Documents control.

15.14. *Ambiguities Not to Be Construed against Party Who Drafted Contract.* The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this contract.

15.15. *No Special Relationship.* The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

15.16 *Confidentiality.* The parties will keep confidential this contract, this transaction, and all information learned in the course of this transaction, except to the extent disclosure is required by law or court order or to enable third parties to advise or assist Buyer to investigate the Property or either party to close this transaction.

15.17 *Waiver of Consumer Rights.* **Buyer Waives Its Rights Under The Texas Deceptive Trade Practices-Consumer Protection Act, Section 17.41 *et seq.* of The Texas Business and Commerce Code, A Law That Gives Consumers Special Rights and Protections. After Consultation With an Attorney of Its Own Selection, Buyer Voluntarily Consents To This Waiver.**

15.18. *Incorporation by Reference.* All exhibits to this Agreement are incorporated into it by reference for all purposes as if fully set forth.

15.19. *Replatting.* Buyer acknowledges that the Property has been subdivided without replatting. The law requires replatting, and Buyer assumes that obligation.

15.20. *Administrative Agreements.* The Director and the Assistant Director of the Transportation and Capital Improvements department may, without further council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this agreement and may declare defaults and pursue remedies for such defaults.

15.21 *City Process.* Nothing in this Agreement obligates the City to take any particular action(s) or make any particular decision(s) regarding sale of the Property, or regarding any issues raised by the City's consideration of a possible sale of the Property, except as stated above, whether such action(s) or decision(s) would customarily be made by the City Council, the Planning Commission or any department of the City. Nor shall this Agreement be deemed to constitute any prejudgment or predetermination of any matters required or permitted to be considered as part of the City's determination whether to sale the Property, or whether to take any related discretionary action(s), including waiver of any permit requirements or abbreviation of any city procedures. Seller will cooperate with Buyer to the extent allowed by law and as directed by its governing body. Buyer understands that there is no agreement or guarantee related to the outcome or approval of any application that Buyer may submit for the property.

## **16. Public Information.**

Buyer acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this agreement waives an otherwise applicable exception to disclosure.

## 17. Brokers' Commission.

Seller must pay a commission according to an agreement between Seller and Seller's Broker. The commission will be divided between Seller's Broker and Buyer's broker according to an agreement between them. Each party represents to the other that no other commissions are due in respect of this transaction. In case of a dispute over the amount or allocation of the commission, the Title Company may nevertheless close the transaction and deliver the deed to Buyer, holding open only the distribution of proceeds to Seller.

**In Witness Whereof**, the parties have caused their representatives to set their hands.

**Seller:**

**City of San Antonio**, a Texas  
municipal corporation

Signature: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Buyer:**

????????????????

Signature: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Attest:**

\_\_\_\_\_  
City Clerk

**Approved as to Form:**

\_\_\_\_\_  
City Attorney

## Title Company Acknowledgment and Receipt

---

**Seller:** City of San Antonio

**Address:** P.O. Box 839966, San Antonio, Texas 78283-3966

**Buyer:**

**Address:**

**Property:**

Title Company agrees to act as escrow agent according to the terms of this Contract. Further, Title Company acknowledges receipt from Buyer of three fully executed counterpart originals of the Contract on the same date, with one fully executed original Contract being returned to each of Seller and Buyer.

????????????????

By:\_\_\_\_\_

Printed

Name:\_\_\_\_\_

Title:\_\_\_\_\_

Date:\_\_\_\_\_

## Title Company Receipt for Earnest Money

---

**Seller:** City of San Antonio

**Address:** P.O. Box 839966, San Antonio, Texas 78283-3966

**Buyer:**

**Address:**

**Property:**

Title Company acknowledges receipt from Buyer of earnest money in the amount set forth below:

Amount: \_\_\_\_\_

??????????????

By: \_\_\_\_\_

Printed

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**Exhibit A**

---

## Exhibit B

---

### Representations; Environmental Matters

#### A. Seller's Representations to Buyer

Seller represents to Buyer that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* Seller is a **[specify type of organization]** duly organized, validly existing, and in good standing under the laws of the state of [Texas/**state**] with authority to convey the Property to Buyer. This contract is, and all documents required by this contract to be executed and delivered to Buyer at closing will be, duly authorized, executed, and delivered by Seller.

2. *Litigation.* There is no litigation pending or threatened against Seller that might affect the Property or Seller's ability to perform its obligations under this contract **[include if applicable: , except: [specify]]**.

3. *Violation of Laws.* Seller has not received notice of violation of any law, ordinance, regulation, or requirements affecting the Property or Seller's use of the Property **[include if applicable: , except: [specify]]**.

4. *Licenses, Permits, and Approvals.* Seller has not received notice that any license, permit, or approval necessary to operate the Property in the manner in which it is currently operated will not be renewed on expiration or that any material condition will be imposed in order to obtain their renewal **[include if applicable: , except: [specify]]**.

5. *Condemnation; Zoning; Land Use; Hazardous Materials.* Seller has not received notice of any condemnation, zoning, or land-use proceedings affecting the Property or any inquiries or notices by any governmental authority or third party with respect to the presence of hazardous materials on the Property or the migration of hazardous materials from the Property **[include if applicable: , except: [specify]]**.

6. *No Other Obligation to Sell the Property or Restriction against Selling the Property.* Except for granting a security interest in the Property, Seller has not obligated itself to sell the Property to any party other than Buyer. Seller's performance of this contract will not cause a breach of any other agreement or obligation to which Seller is a party or to which it is bound.

7. *No Liens.* On the Closing Date, the Property will be free and clear of all mechanic's and materialman's liens and other liens and encumbrances of any nature except the Permitted Exceptions, and no work or materials will have been furnished to the Property that might give rise to mechanic's, materialman's, or other liens against the Property other than work or materials to which Buyer has given its consent.

8. *No Other Representation.* Except as stated above or in the notices, statements, and certificates set forth in Exhibit D, Seller makes no representation with respect to the Property.

9. *No Warranty.* Seller has made no warranty in connection with this contract.

#### **B. "As Is, Where Is"**

**This Contract Is An Arms-Length Agreement Between The Parties. The Purchase Price Was Bargained On The Basis Of An "As Is, Where Is" Transaction And Reflects The Agreement Of The Parties That There Are No Representations, Disclosures, Or Express Or Implied Warranties, Except For The Warranty Of Title Stated In The Closing Documents And Seller's Representations To Buyer Set Forth In Section A Of This Exhibit B.**

**The Property Will Be Conveyed To Buyer In An "As Is, Where Is" Condition, With All Faults. [Include If Applicable: Seller Makes No Warranty Of Condition, Merchantability, Or Suitability Or Fitness For A Particular Purpose With Respect To The Personal Property.] All Warranties, Except The Warranty Of Title In The Closing Documents, Are Disclaimed.**

The provisions of this section B regarding the Property will be included in the deed with appropriate modification of terms as the context requires.

#### **C. Environmental Matters**

**After Closing, As Between Buyer And Seller, The Risk Of Liability Or Expense For Environmental Problems, Even If Arising From Events Before Closing, Will Be The Sole Responsibility Of Buyer, Regardless Of Whether The Environmental Problems Were Known Or Unknown At Closing. Once Closing Has Occurred, Buyer Indemnifies, Holds Harmless, And Releases Seller From Liability For Any Latent Defects And From Any Liability For Environmental Problems Affecting The Property, Including Liability Under The Comprehensive Environmental Response, Compensation, And Liability Act (CERCLA), The Resource Conservation And Recovery Act (RCRA), The Texas Solid Waste Disposal Act, Or The Texas Water Code. Buyer Indemnifies, Holds Harmless, And Releases Seller From Any Liability For Environmental Problems Affecting The Property Arising As The Result Of Seller's Own Negligence Or The Negligence Of Seller's Representatives. Buyer Indemnifies, Holds Harmless, And Releases Seller From Any Liability For Environmental Problems Affecting The Property Arising As The Result Of Theories Of Products Liability And Strict Liability, Or Under New Laws Or Changes To Existing Laws Enacted After**

**The Effective Date That Would Otherwise Impose On Sellers In This Type Of Transaction  
New Liabilities For Environmental Problems Affecting The Property.**

The provisions of this section C regarding the Property will be included in the deed with appropriate modification of terms as the context requires.

**D. Buyer's Representations to Seller**

Buyer represents to Seller that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* Buyer is a ??? corporation, duly organized, validly existing, and in good standing under the laws of the state of Texas with authority to acquire the Property from Seller. This contract is, and all documents required by this contract to be executed and delivered to Seller at closing will be, duly authorized, executed, and delivered by Seller.

2. *Litigation.* There is no litigation pending or threatened against Buyer that might affect Buyer's ability to perform its obligations under this contract.

## Exhibit C

---

### **Notices, Statements, and Certificates**

The following notices, statements, and certificates are attached for delivery to Buyer, and Buyer acknowledges receipt of the notices, statements, and certificates by executing this contract:

Notice concerning underground storage tanks, described in section 334.9 of title 30 of the Texas Administrative Code

Notice concerning the purchaser's three-day right of rescission under a contract to purchase real property if (1) the seller or the seller's agent solicits the sale at a place other than the seller's place of business; (2) the purchaser submits the purchase contract to the seller or the seller's agent at a place other than the seller's place of business; and (3) the consideration payable under the purchase contract exceeds \$100; unless either (1) the purchaser is represented by a licensed attorney; (2) the transaction is negotiated by a licensed real estate broker; or (3) the transaction is negotiated at a place other than the purchaser's residence by the person who owns the property, as described in chapter 39 of the Texas Business and Commerce Code

## Exhibit D: Form of Deed

---

**Notice of Confidentiality Rights: If You Are a Natural Person, You May Remove or Strike Any or All the Following Information from Any Instrument That Transfers an Interest in Real Property Before it Is Filed for Record in the Public Records: Your Social Security Number or Your Driver's License Number.**

---

State of Texas        }  
                             }  
County of Bexar      }

### Deed Without Warranty

---

**Authorizing Ordinance:**

**Statutory Authority:** Local Government Code § 272.001(a)

**SP No./Parcel:**

**Grantor:** City of San Antonio

**Grantor's Mailing Address:** City Of San Antonio, P.O. Box 839966, San Antonio,  
Texas 78283-3966 (Attn: City Clerk)

**Grantor's Street Address:** City Hall, 100 Military Plaza, San Antonio, Texas 78205  
(Bexar County)

**Grantee:**

**Grantee's Mailing Address:**

**Consideration:** \$10 in hand paid and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged.

**Property:** All of the following real property situated within the corporate limits of the City of San Antonio, Bexar County, Texas, being described as follows:

more particularly described by metes and bounds and shown by survey on **Exhibit "A"** attached hereto and incorporated herein verbatim for all purposes.

Grantor, for the Consideration, Grants, Bargains, and Conveys to Grantee, all of Grantor's right, title, interest, and estate, both at law and in equity, as of the date hereof, in and to the Property,

together with all and singular the rights and appurtenances thereto in anywise belonging, To Have and To Hold unto Grantee, Grantee's successors and assigns forever, **Without Any Express Or Implied Warranty Whatsoever, Including But Not Limited to Warranties of Title, Condition, or Character.**

The Property is conveyed together with any and all improvements, structures and fixtures located thereon, and with all rights, privileges, rights of way, and easements appurtenant thereto, unless reserved unto other parties herein.

**Reservations, Restrictions, Exceptions, And Conditions To Conveyance:** This conveyance is explicitly subject to the following:

**A. Reservations:**

**B. Easements:** All recorded and unrecorded easements, whether or not open and obvious.

**C. Restrictions:** All covenants and restrictions affecting the Property.

**D. Exceptions:** All instruments affecting the Property, whether or not recorded.

**E. Conditions:** All conditions affecting the Property.

This conveyance does not relieve Grantee of any building, zoning, or other city-imposed requirements, or other land use restrictions applicable to the Property or the obligation to pay any real estate taxes that may otherwise be due.

**Grantor expressly disclaims any and all warranties arising by common law, statute (including without limitation the implied warranties of § 5.023, Texas Property Code or any successor statute), or otherwise.**

**Setting Out The Specific Reservations And Disclaimers Does Not Imply That The Property Is Free Of Other Encumbrances Or Adverse Claims Or Conditions. Grantor Specifically Disclaims Any Such Implication.**

**In Witness Whereof,** Grantor has caused its representative to set its hand:

**Grantor:**

**City of San Antonio,** a Texas municipal corporation

By: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Draft. This is only to show the agreed form of the final document. This draft is neither ready nor suitable to be signed.**

Date: \_\_\_\_\_

**Approved As To Form:**

By: \_\_\_\_\_  
City Attorney

The State of Texas     }

County of Bexar       }

Before me, the undersigned authority, this instrument was this day acknowledged by  
\_\_\_\_\_, of and for the City of San Antonio, a Texas municipal corporation,  
on behalf of that entity in the capacity stated.

Date: \_\_\_\_\_

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: \_\_\_\_\_

**After Recording, Return To:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_